

**South Carolina Department of Health and Environmental Control
Bureau of Air Quality**

**Response to Comments
Public Notice #13-076-CM-RE
FinnChem USA, Inc. Operating Permits Renewals
Eastover, Richland County, South Carolina
Permit No. CM-1900-0172 & CM-1900-0206**

The following is the South Carolina Department of Health and Environmental Control (DHEC) Bureau of Air Quality's (Department) response to comments made during the formal comment period held August 30, 2013, through September 28, 2013, regarding the draft operating permits renewals for FinnChem USA, Inc. ("FinnChem Eastover") Plants on Wateree Station Road in Eastover, Richland County. FinnChem Eastover is comprised of two plants: a sodium chlorate plant (CM-1900-0172) and an anode plant (CM-1900-0206). The written comments received regarding the draft permit are available for viewing at the SC DHEC Columbia office located at 2600 Bull Street, Columbia, SC 29201, or on the SC DHEC webpage <http://www.scdhec.gov/environment/baq/PermittingDecisions>, or hardcopies can be requested by contacting our Freedom of Information Office at (803) 898-3817.

The written comments received asserted that the FinnChem Eastover facilities were collocated with the nearby International Paper Eastover (IP Eastover) facility at 4001 McCords Ferry Road in Eastover, SC and requested clarification of statements regarding emission calculations in the statements of basis.

Collocation is when two or more facilities are considered a single stationary source for the purposes of emission aggregation and regulatory applicability. The Department had previously determined that the FinnChem Eastover facilities and the IP Eastover facility were not collocated; see July 1, 2002, letter from the Department to FinnChem. In making its determination regarding collocation, the Department had considered collocation in the context of Title I, Title III, and Title V of the Clean Air Act. Collocation determinations involve three aspects: 1) same industrial grouping, 2) contiguous/adjacent sites, and 3) common control.

1. Collocation

A. Same Industrial Grouping - The commenter noted that the Environmental Protection Agency's (EPA) Enforcement & Compliance History Online (ECHO)¹ database's facility characteristics for the IP Eastover facility has a number of SIC codes listed and one of them is a secondary code of 2861, Gum and Wood Chemicals.² Same industrial group is based on the first two digits of the primary Standard Industrial Classification (SIC)³ code ("major

¹ Available at <http://www.epa-echo.gov/>

² <http://www.epa-echo.gov/cgi-bin/get1cReport.cgi?tool=echo&IDNumber=4507900046> (last visited October 22, 2013).

³ US Occupational Safety and Health Administration, Standard Industrial Classification Manual (1987) (available at https://www.osha.gov/pls/imis/sic_manual.html, last visited October 28, 2013).

group”). FinnChem has a SIC code of 2819, Industrial Inorganic Chemicals not Elsewhere Classified.

Response: The SIC codes for IP Eastover, related to its primary product are the following: 2621, Paper Mills and 2611, Pulp Mills. The FinnChem Eastover sodium chlorate plant’s primary SIC code falls under 2819, Industrial Inorganic Chemicals not Elsewhere Classified. ECHO also lists code 2861 as one of the secondary SIC codes for IP. The SIC code 2861 is for the Gum and Wood Chemical Industry and is not the primary SIC code for IP Eastover. These two facilities do not have the same industrial grouping as the primary SIC codes’ major groups are different. Additionally, FinnChem Eastover’s sodium chlorate supply to IP Eastover is not related to the products associated with SIC code 2861.

B. Support Facility - Even if two facilities do not share the same SIC codes, they can be treated as having the same industrial grouping if one facility is a support facility for the other. The commenter believes that the FinnChem Eastover facilities are support facilities for the IP Eastover facility and outlined several supporting arguments. These arguments are summarized below.

i. The commenter stated that “EPA defines ‘support facilities’ as ‘those which convey, store, or otherwise assist in the production of the principal product.’”⁴ (hereinafter the “Simpson Paper” letter)

Response: It should be noted that the full sentence from the referenced letter is, “support facilities are *typically* those which...” (emphasis added). Additionally, the EPA has not promulgated a definition for a “support facility” in any regulation.

In the Simpson Paper letter, the EPA held that the Simpson Paper Company Shasta Mill (Mill) and Specialty Minerals, Inc. (SMI) should be treated as having the same industrial grouping as both facilities are involved in the same primary activity, the process of paper production. In that situation, one hundred percent of SMI’s production of precipitate calcium carbonate (PCC) went to the Mill for use in paper production and the Mill provided carbon dioxide to SMI for producing PCC. FinnChem Eastover and IP Eastover’s situation is not comparable because much less than fifty percent of FinnChem’s production is sold to IP Eastover, per July 19, 2002, and October 4, 2013, letters. Further, no raw material, intermediate, or support chemical is provided by IP Eastover to FinnChem Eastover.

ii. The commenter referenced an EPA guidance memorandum that stated “where more than 50% of the output or services provided by one facility is dedicated to another facility that it supports, then a support facility relationship is presumed to exist.”⁵ (hereinafter the “Oscar Mayer” letter)

⁴ Matt Haber, US EPA, (November 27, 1996) (Reply to Simpson Paper Company regarding Specialty Minerals) (available at <http://www.epa.gov/region07/air/title5/t5memos/simpson.pdf>, last visited October 22, 2013).

⁵ Robert Miller, US EPA, (August 25, 1999) (Reply to Wisconsin Department of Natural Resources regarding Oscar Meyer facility) (available at <http://www.epa.gov/region07/air/nsr/nsrmemos/oscar.pdf>, last visited October 22, 2013).

Response: FinnChem stated in their July 19, 2002, letter to the Department that sales of sodium chlorate to IP Eastover constitute much less than fifty percent of their production. Their October 4, 2013, letter to the Department confirmed that this statement continues to be accurate.

iii. The commenter noted that the Oscar Mayer letter also stated that “even where this 50% test is not met, however, other factors may lead the permitting authority to make a support facility determination.” Example factors given were:

The degree to which the supporting activity receives materials or services from the primary activity (which indicates a mutually beneficial arrangement between the primary and secondary activities);

The degree to which the primary activity exerts control over the support activity's operations;

The nature of any contractual arrangements between the facilities;

The reasons for the presence of the support activity on the same site as the primary activity (e.g., whether the support activity would exist at that site but for the primary activity).

Response: As discussed in item i above, FinnChem Eastover does not receive any materials from IP Eastover. They also do not share services with IP Eastover. Neither facility can exert control over the other. Their contractual relationship is a standard industry contract between buyer and seller. IP Eastover is only one of FinnChem's many potential customers and receives much less than fifty percent of FinnChem Eastover's product. Therefore, IP Eastover does not have the ability to exert control over FinnChem's activities; see item D below for further discussion of contracts and facility control.

iv. The commenter believes that the location of FinnChem Eastover was for the purposes of supporting IP Eastover. The commenter included what appears to be a printout from the Augusta Chronicle's website, which states that FinnChem's predecessor, Huron Tech, located a similar plant in Augusta due to the proximity of another International Paper facility. The printout states that the Augusta International Paper plant is a major customer of FinnChem Augusta.

Response: As discussed below in the common control response, IP Eastover was not a customer when the FinnChem Eastover facility was sited, constructed, and first started operation. It should be noted that the permitting authority for the Augusta plant has not deemed the plants in Georgia to be collocated.

v. The commenter believes that the facts in this situation are identical to those in a 1998 letter from the EPA to the Department regarding four collocation scenarios.⁶ (hereinafter the “James Joy” letter) The commenter asserts that this situation is “very similar” to scenario one and “virtually identical” to scenario three, with the exception that FinnChem does not lease land from IP Eastover.

Response: The commenter made these comparison statements to question whether FinnChem Eastover was a support facility to IP Eastover. However, both of these scenarios in the James Joy letter dealt with the establishment of common control. A support facility determination is only relevant in determining industrial grouping.⁷

Scenario one of the James Joy letter involved four facilities on contiguous and adjacent property. Three of the facilities were production and research and development (R&D) facilities owned by one corporation and the fourth was an electrical cogeneration facility that was a joint venture between the owner of the other three facilities and an electric utility. The EPA agreed that common control was present as the owner of the production and R&D facilities exerted control over the cogeneration facility via the contractual relationships forming the joint venture. This scenario is not analogous because FinnChem Eastover and IP Eastover are not on contiguous or adjacent properties (see Contiguous or Adjacent Properties below) and there is not common control via contractual relationship (see Common Control below).

Scenario three involved two separately owned facilities (Willamette and ECC International), that were on contiguous and adjacent properties. Willamette supplied ECC with steam, electricity, and waste treatment services and in return ECC supplied one hundred percent of its production to Willamette. Common control was present in that, in the event of loss of any service from Willamette, ECC would have to shut down until service is restored. FinnChem Eastover and IP Eastover are not on contiguous or adjacent properties. Each facility’s continued operation is not dependent on the other.

C. Contiguous or Adjacent Properties - The FinnChem properties and the IP Eastover property are not considered contiguous because they do not touch. Adjacent is a case-by-case determination based on the distance and interdependency of the facilities. The commenter stated that the FinnChem plant was approximately 1.7 miles from the IP wastewater plant, 2.3 miles from beginning of the private IP Eastover rail spur, that the facilities are connected by private rail spurs, and that this supported a finding of adjacency. The commenter referenced an EPA memorandum where two facilities connected by a dedicated railroad line where collocated even though they were located approximately a mile apart.⁸

⁶ R. Douglas Neeley, US EPA (February 20, 1998) (Reply to South Carolina Department of Health and Environmental Control regarding different potential collocation scenarios) (available at <http://www.epa.gov/region07/air/title5/t5memos/19980220.pdf>, last visited October 22, 2013).

⁷ *Anadarko Petroleum Corp., Frederick Compressor Station*, 2011 US EPA, Petition # VIII-2010-4 (Order Responding to Petitioners' Request that the Administrator Object to Issuance of a State Operating Permit).

⁸ Edward E. Reich, US EPA (June 30, 1981) (PSD Definition of Source) (available at <http://www.epa.gov/region07/air/nsr/nsrmemos/defsrce2.pdf>, last visited October 22, 2013).

Response: As part of the Department's consideration of these comments, we reviewed the 2002 collocation determination. FinnChem Eastover stated in its June 19, 2002, letter that the distance between FinnChem Eastover and IP Eastover was five miles. The Department received clarification that this value was based on the driving distance between the two facilities since they are not directly connected to each other. FinnChem Eastover and IP Eastover property boundaries are approximately 0.9 miles apart. Because the properties are separated there must be some type of nexus between the facilities to be considered adjacent. Additionally, the EPA memorandum that preceded the referenced memorandum provided more detail about the two facilities located about a mile apart.⁹ The two facilities were the only two users of a "special spur" of the railroad and in the future, the spur would be used specifically to move unpainted parts from one plant to the other for painting. This special spur was the nexus between the plants.

The FinnChem Eastover and the IP Eastover are not connected to each other by a private railroad spur. Each facility has its own spur to tie into the existing main CSX rail line. Additional clarification from FinnChem's October 4, 2013, letter:

FinnChem owns a rail spur that connects FinnChem Eastover to a main railroad line operated by CSX. This CSX main line runs from Sumter, SC to Cayce, SC and was located in its present-day location prior to the construction of FinnChem Eastover. FinnChem Eastover ships its product to various pulp and paper mills throughout the Eastern United States via this connection to the CSX main line, including to IP Eastover. FinnChem rail spur ends at the point where it ties into the CSX main line and there are no means by which FinnChem Eastover can directly deliver product to the IP Eastover facility. Any product shipped from FinnChem Eastover to IP Eastover must be shipped via CSX.

The Department does not consider each facility's use of the existing main railroad line adequate to support adjacency.

D. Common Control - In most cases common control is demonstrated by common ownership, (i.e., same parent company), which does not exist in this case. As the commenter noted, absent common ownership, then one should look at whether there is a contract for services between the two companies or a support/dependency relationship.

Response: As stated in the James Joy letter, the presence of a contractual relationship does not automatically establish common control; see scenarios two and three. The contracts have to be reviewed to determine how the facilities interact and whether a facility asserts control over another facility. Questions used to determine if facilities interact¹⁰ are related to the sharing of workforce, equipment, administrative functions, compliance responsibility, etc.; none of which these facilities share. The questions that are most pertinent to this situation are:

⁹ Steve Rothblatt, US EPA (June 8, 1981) (Defining Two Separate Plants as One Source) (available at <http://www.epa.gov/region07/air/nsr/nsrmemos/defsrce2.pdf>, last visited October 22, 2013).

¹⁰ William A. Spratlin, US EPA (September 18, 1995) (Letter to Iowa Department of Natural Resources) (available at <http://www.epa.gov/region07/air/title5/t5memos/control.pdf>, last visited October 22, 2013).

Do the facilities share intermediates, products, byproducts, or other manufacturing equipment? Can the new source purchase raw materials from and sell products or byproducts to other customers? What are the contractual arrangements for providing goods and services?

What is the dependency of one facility on the other? If one shuts down, what are the limitations on the other to pursue outside business interests?

Applying these questions to FinnChem Eastover and IP Eastover's relationship, as discussed in FinnChem's July 19, 2002, and October 4, 2013, letters to the Department also indicates that there is no common control between the facilities.

FinnChem Eastover has stated that they sell product to IP Eastover under industry standard contracts. Sodium chlorate is a commodity chemical sold by suppliers to pulp and paper customers through contracts. "These contracts generally contain "meet or release" clauses that allow a mill customer to challenge the supplier to meet competitive bids for similar volume or be released from the contract." For example, if IP Eastover finds a supplier with a lower price than FinnChem can meet, they are released from the contract with FinnChem and free to purchase from the new supplier.

Sales to IP Eastover have been and continue to be much less than fifty percent of FinnChem Eastover's total production. IP Eastover is only one of several potential customers for sodium chlorate. Note that situation two of the Jim Joy letter indicates that even if FinnChem sold one hundred percent of their production to IP Eastover, there would still not be common control if it was an arrangement of convenience.

FinnChem Eastover and IP Eastover's operational viability are not dependent upon each other. IP Eastover was in operation for approximately fourteen years prior to FinnChem's (at that time, Huron Tech) construction of the Eastover plant. When FinnChem first sited and started operations of its Eastover plant, IP Eastover was not a customer.

Additionally, the Oscar Mayer letter cites the Seitz memorandum, which provides: "A common control determination must focus on who has the power to manage the pollutant-emitting activities of the facilities, including the power to make decisions to implement major emission control measures or to influence production levels or compliance with the environmental regulations."¹¹ As discussed in the items above, each facility reserves these powers to themselves.

Conclusion: In order to be deemed collocated for Title V and PSD all three of the following criteria must be met: 1- same industrial grouping (or be a support facility), 2- contiguous or adjacent properties and 3-common control. In order to be deemed collocated for Title III two

¹¹ John S. Seitz, US EPA (August 2, 1996) (Major Source Determinations for Military Installations under the Air Toxics, New Source Review, and Title V Operating Permit Programs of the Clean Air Act) (available at <http://www.epa.gov/region07/air/nsr/nsrmemos/dodguid.pdf>, last visited October 22, 2013).

criteria must be met: 1- contiguous or adjacent properties and 2- under common control. The facilities do not have the same primary SIC code. FinnChem is not a support facility to IP Eastover. These facilities are not contiguous or adjacent properties and these facilities are not under common controls. Therefore, the Department has determined that our 2002 collocation determination that FinnChem Eastover and IP Eastover were not collocated and were therefore not considered a single major stationary was determined correctly and remains accurate.

2. Possible Increases in Emissions at Both Sources - The FinnChem Eastover facilities' statements of basis contained statements regarding updates to emissions. The sodium chlorate plant's statement of basis stated: "Updated plant production rate so that it's consistent for all sources at the plant (didn't result in a substantial difference in emissions)." The anode plant's statement of basis stated: "Updated the number of batches per day to match the existing permit limit of 17.6 lb/day of HCl [hydrochloric acid]" and "Updated the acid solution usage rate to match the existing permit limit of three -55gallon drums per day."

The commenter requested the basis for these changes and stated that they could be construed as debottlenecking.

Response:

The updated rates as referred to in the statements of basis for the chlorate production facility and the anode facility do not reflect an increase in production. Instead, FinnChem submitted updated rates for accuracy and consistency purposes.

In the renewal application for CM-1900-0172, FinnChem Eastover updated the maximum sodium chlorate production rate from the rounded production rate of 260 tons per day used in the 1998 air permit to the more exact value of 261.25 tons per day. This correction did result in a minor increase in calculated potential emissions, however, the sodium chlorate production capacity at the facility has remained unchanged since initial permitting and construction of the facility.

The FinnChem anode plant's permit, CM-1900-0206, includes a HCl containing material usage limit of 17.6 pounds per day as HCl for the anode coating process and a usage limit of three 55-gallon drums of acid solution per day for the metal etching process. These limits were established in the initial construction permits and have been in the operating permits since that time; see conditions C.3 and C.4 of the operating permit renewal. In the renewal application, FinnChem updated the uncontrolled emission calculations to utilize these existing permit limits. Controlled emission rates remain the same. No new state or federal regulatory requirements were triggered based on this update.

Debottlenecking is a term meant to describe an increase in emissions from unmodified equipment that will occur as a result of a proposed project, physical change or method of operation, which removes a utilization limiting factor.¹² This term is used to determine if emission increases for a project trigger major source construction permitting requirements under

¹² US EPA, Draft New Source Review Workshop Manual, (October 1990) (available at <http://www.epa.gov/NSR/ttnsr01/gen/wkshpman.pdf>, last visited October 22, 2013).

the New Source Review Prevention of Signification Deterioration (PSD) regulations. FinnChem Eastover has taken federally enforceable limits to maintain emissions below major source thresholds for PSD.

3. Objection - In addition to the comments discussed above, the commenter objected to the renewal of the FinnChem Eastover permits.

Response: Title 48 of the SC Code of Laws, Section 48-1-100, states that “If, after appropriate public comment procedures, as defined by Department regulations, the Department finds that the discharge from the proposed outlet or source will not be in contravention of provisions of this chapter, a permit to construct and a permit to discharge must be issued to the applicant.” The Department’s decision is based on the Department’s technical review of an applicant’s application and the regulatory requirements in place at the time of the Department’s review.



October 4, 2013

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BUREAU OF AIR QUALITY

Via e-mail

Ms. Elizabeth J. Basil
Director, Engineering Division
Bureau of Air Quality (BAQ)
South Carolina Department of Health and Environmental Control
2600 Bull Street
Columbia, SC 29201

**Re: FinnChem USA, Inc. Conditional Major Operating Permit Renewals
Permits Nos. CM-1900-0172 and CM-1900-0206
Public Notice 13-076-CM-RE**

Dear Ms. Basil:

FinnChem USA, Inc. (FinnChem) operates two facilities at 200 Wateree Station Road (CM-1900-0172) and 191 Wateree Station Road (CM-1900-0206) in Eastover, South Carolina. In response to public comments made by Mr. Heath Hill on September 20, 2013 regarding the above-referenced public notice, FinnChem is providing additional information in support of the fact that FinnChem's Eastover facilities are not collocated with the International Paper (IP) facility located at 4001 McCords Ferry Road in Eastover, SC as asserted in Mr. Hill's letter.

1. FinnChem Eastover and IP Eastover are not connected by private rail spurs

FinnChem owns a rail spur that connects FinnChem Eastover to a main railroad line operated by CSX. This CSX main line runs from Sumter, SC to Cayce, SC and was located in its present-day location prior to the construction of FinnChem Eastover. FinnChem Eastover ships its product to various pulp and paper mills throughout the Eastern United States via this connection to the CSX main line, including to IP Eastover. FinnChem Eastover's rail spur ends at the point where it ties into the CSX main line and there are no means by which FinnChem Eastover can directly deliver product to the IP Eastover facility. Any product shipped from FinnChem Eastover to IP Eastover must be shipped via CSX.

2. FinnChem Eastover sells less than 50% of total production to IP Eastover

In our letter to South Carolina Department of Health and Environmental Control (SCDHEC) on June 19, 2002, we indicated that FinnChem Eastover's sales to IP Eastover are much less than half of the total production from FinnChem Eastover. We can confirm that this is still the case today. FinnChem's Eastover sodium chlorate facility ships to several pulp and paper mills throughout the Eastern United States. IP Eastover is only one of several potential customers for our product.

FINNCHEM USA INC.

200 Wateree Station Rd
Eastover, SC 29044
Tel: 803-353-8787
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3. FinnChem Eastover sells product to IP Eastover under industry-standard contracts

Sodium chlorate is a commodity chemical that is generally sold by suppliers to pulp and paper customers through annual or multi-year contracts. These contracts are supply agreements that outline annual supply volumes and pricing. The contracts generally contain "meet or release" clauses that allow a mill customer to challenge the supplier to either meet competitive bids for similar volume or be released as a supplier. As indicated in our June 19, 2002 letter to SCDHEC, the relationship between IP Eastover and FinnChem Eastover continues to be an arms-length contract for FinnChem Eastover to supply a product to IP Eastover. When the current contract expires, both parties are free to contract with others for the same amount of product if they so choose.

4. FinnChem Eastover's operational viability is not dependent on sales to IP Eastover

The survival of FinnChem's sodium chlorate plant in Eastover is not dependent on sales to IP Eastover. All of FinnChem's production capacity can be placed in sales to other customers and, at times, has been during the course of FinnChem Eastover's history. In fact, when FinnChem Eastover first sited and started its operations, the neighboring pulp and paper mill was not a customer of FinnChem Eastover's sodium chlorate product.

5. The distance between FinnChem Eastover and IP Eastover (as measured by driving) is approximately five miles

In our June 19, 2002 letter, we stated that the distance between FinnChem Eastover and IP Eastover was five miles. This distance is based on the driving distance between the two facilities since they are not directly connected to each other.

On July 1, 2002, SCDHEC's Bureau of Air Quality (BAQ) issued a letter to FinnChem documenting a collocation determination for FinnChem Eastover and IP Eastover. In that letter, the BAQ concurred with FinnChem's determination that the FinnChem Eastover and IP Eastover facilities are not collocated sources. Based on that letter and the additional information provided above, we trust that the BAQ will continue to concur with FinnChem's determination that IP Eastover and FinnChem Eastover are not collocated facilities under the Clean Air Act (CAA).

If you have any questions, please contact me at (803) 353-3346.

Sincerely,
FinnChem USA, Inc.

Dave Bartolec
Plant Manager

cc: Carolina Den Brok-Perez, Kemira Chemicals
General Counsel

FINNCHEM USA INC.

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